

FINANCE COMMITTEE

11-0015R

RESOLUTION AUTHORIZING ASSIGNMENT OF PURCHASE RIGHTS
UNDER CONTRACT NO. 20049 TO ZIEGLER, INC.

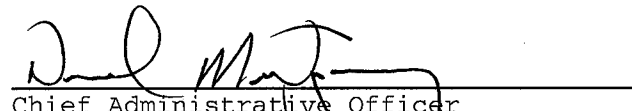
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute an Assignment of Purchase Option, a copy of which is on file in the office of the city clerk as Public Document No. _____, with Ziegler, Inc., assigning to them the city's rights to purchase 12 graders from Caterpillar Financial Services Corporation under city Contract No. 20049 at no cost to either party.

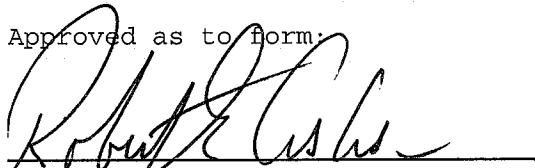
Approved:


Department Director


Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

FIN/ATTY REA:dma 12/30/2010

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the City to assign to Ziegler, Inc. its rights under a long-term lease with Caterpillar Financial Services Corporation to purchase the 12 graders which are the subject of that contract.

Effective on January 1, 2006, the City leased 12 Caterpillar-brand graders from Caterpillar Financial Service Corporation for a term of five years, which term is up at the end of this year. The agreement included an option to purchase the equipment at the end of the lease term at a price which is more favorable than that normally obtainable on the used equipment market but the City had already decided not to exercise that option and has in fact leased new graders to replace the equipment whose lease is up.

The City and Ziegler, the Caterpillar dealer for the area, have both been contacted by a number of area governmental agencies which would like to acquire

some of the equipment at the City's price, as opposed to paying the higher market price for it. The City looks favorably on assisting their fellow local government agencies but is not in the business of selling heavy equipment and is not interested in entering this business arena. This is, however, Ziegler's trade and so the City is willing to assign its right to purchase to Ziegler and to allow Ziegler to address all of the marketing, sale, transportation and warranty issues that go with the commercial sale of such equipment.

The City benefits by conveniently bringing the lease to an end and, hopefully, by helping out its neighboring governmental agencies.

ASSIGNMENT OF PURCHASE OPTION

City of Duluth & Ziegler, Inc.

This ASSIGNMENT entered into this ___ day of December, 2010, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City" and ZIEGLER, INC., a corporation under the laws of the State of Minnesota, hereinafter referred to as "Ziegler".

WHEREAS, Caterpillar Financial Services Corporation, hereinafter referred to as "Cat" and City entered into a Long-Term Rental Agreement bearing City Contract No. 20049 and Cat Contract No. 001-0410969-000 together with attached and supporting contract documents, all of which are collectively known as the "Agreement", for the leasing of Twelve (12) motor graders which are more specifically described in Exhibit A attached hereto and made a part hereof and which are hereinafter referred to as the "Graders"; and

WHEREAS, the Agreement includes an "Option to Purchase" (the "Option") allowing the City to purchase the Graders under terms set forth in the Agreement; and

WHEREAS, Ziegler is desirous of acquiring the afore-said purchase option from City and City is willing to assign said right to Ziegler under the terms and conditions of this Agreement, subject to the approval of Cat.

NOW THERE, in consideration of the mutual covenants and conditions hereinafter contained, City and Ziegler hereby agree as follows:

1. For the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, City hereby assigns to Ziegler its Option the Graders as set forth in the Agreement, subject to the terms and conditions hereinafter set forth and subject to written consent of Cat pursuant to Paragraph 17 of that portion of the Agreement labeled "Long Term Rental Agreement".
2. Upon exercise of the Option, all of City's rights and obligations under the Agreement shall transfer to Ziegler and City shall have no further obligation to Ziegler or to Cat under the Agreement.
3. Ziegler agrees that it accepts the Graders in "as is-where is" condition without any warranties of any kind whatsoever, express or implied, from City, including but not limited to warranties of fitness for use or for a particular purpose and warranties of title.
4. Within ten (10) Days of the exercise of the Option by Ziegler, Ziegler shall have taken possession, care, custody and control of the Graders from City and shall have removed

them from City property. Ziegler shall be responsible for so removing said Graders and for paying all costs associated therewith. Any injury to or death of any person and any damage to the Graders or to any other property, real or personal, arising out of said removal shall be solely that of Ziegler.

5. If Cat fails to give their consent as required in Paragraph 1 above, this agreement shall be deemed to be null and void and of no further effect and the parties shall continue to be bound by the terms of the Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH
("City")

ZIEGLER, INC., a Minnesota Corporation
("Ziegler")

By: _____
Mayor

By: _____
(name) _____

Attest:

(Title) _____

City Clerk

(Date) _____

(Date) _____

Approved:

Countersigned:

Assistant City Attorney

City Auditor

CONSENT BY CAT:

As an authorized representative of Caterpillar Financial Services Corporation and on its behalf, I hereby grant the consent of Caterpillar Financial Services Corporation to the above assignment of the Agreement as therein described from the City of Duluth to Ziegler, Inc.

CATERPILLAR FINANCIAL SERVICES CORPORATION

By: _____

Its: _____

Dated: _____

Exhibit A = the list of graders with serial numbers.